

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

FREDRICK MARTINEZ,

Petitioner,

vs.

STATE OF NEVADA, et al.,

Respondents.

Case No. 3:13-cv-00527-RCJ-VPC

**ORDER**

Petitioner, who is a prisoner in the custody of the Nevada Department of Corrections, has submitted a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (#1). The court dismisses this action because petitioner did not pay the filing fee and did not file an application to proceed in forma pauperis, together with a signed financial certificate and a copy of his inmate account statement, as required by 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2. Based upon review of the file, it does not appear that a dismissal without prejudice would affect materially the timeliness of a promptly filed new action.<sup>1</sup>

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<sup>1</sup>Petitioner alleges that the Nevada Supreme Court decided his direct appeal on January 14, 2010. The federal one-year period of limitation does not start until his judgment of conviction becomes final. 28 U.S.C. § 2244(d)(1)(A). The judgment does not become final until the Supreme Court of the United States denies a petition for a writ of certiorari or, if no petition is filed, when the time to petition expires. Jimenez v. Quarterman, 555 U.S. 113, 119-20 (2009). The period of limitation started after April 14, 2010. Two hundred seventy-three days later, petitioner filed a state habeas corpus petition on January 12, 2011, which tolled the one-year period. 28 U.S.C. § 2244(d)(2). The Nevada Supreme Court decided the appeal from the denial of that petition on March 7, 2012, and remittitur issued on April 7, 2012. Martinez v. State, 2012 WL 762114 (Nev. 2012) (unpublished disposition). The one-year period resumed after that date. Five hundred thirty-three days later, petitioner mailed his federal habeas corpus petition to this court on September 18,

1 If petitioner commences a new action, then he will need to use the correct form. Petitioner  
2 has used a form for a person sentenced to death, but he has not received that sentence.

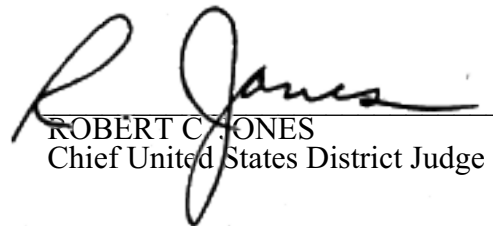
3 Reasonable jurists would not find the court's conclusions to be debatable or wrong, and the  
4 court will not issue a certificate of appealability.

5 IT IS THEREFORE ORDERED that the clerk of the court shall send petitioner a blank form  
6 for an application to proceed in forma pauperis for incarcerated litigants and a blank § 2254 habeas  
7 corpus petition form with instructions.

8 IT IS FURTHER ORDERED that this action is **DISMISSED** without prejudice to  
9 petitioner's commencement of a new action in which he either pays the filing fee in full or submits a  
10 complete application to proceed in forma pauperis, accompanied by a signed financial certificate  
11 and a statement of his inmate account. The clerk of the court shall enter judgment accordingly.

12 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

13 Dated: This 15<sup>th</sup> day of October, 2013.

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16 ROBERT C. JONES  
17 Chief United States District Judge  
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28 2013. A total of eight hundred six non-tolled days have passed. This action already is untimely.